

Massachusetts Department of Housing and Community Development Division of Housing Stabilization

To: **DHCD Field Staff**

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Housing Stabilization Notice 2012-06B, Guidance on Use of Terms Regarding RE:

Health and Safety

Introduction

This Housing Stabilization Notice (HSN) provides guidance on how Department of Housing & Community Development (DHCD) Division of Housing Stabilization (DHS) Homeless Coordinators and Department of Children and Families (DCF) Health and Safety (HAS) assessors are to work with terms used in regard to HAS assessments in applicable statute and regulations. The Fiscal Year 2013 budget granted DCF authority to perform HAS assessments to determine if a family "faces a substantial health and safety risk to the family that is likely to result in significant harm should the family remain in such housing situation" if they are applying for Emergency Assistance (EA) on the basis that the head of household of the family is a secondary tenant facing such circumstances. FY Budget line item 7004-0101. EA regulations and the DHCD-DCF HAS Administrative Plan provide a structure for implementing the new legislative requirements. See 760 C.M.R. § 67.06 (1) (a) 4., (e) 3.-4., (f) 6.-9. This guidance provides additional information in regard to terms used in those documents. This HSN supersedes and renders obsolete HSN 2012-06 and HSN 2012-06A.

Summary

- A regular guest's repeated conduct is attributable to primary tenant.
- Whether conduct can or cannot "be addressed" through an intervention is dependent on DHS assessment.
- "Lack of" a basic necessity or an inability to access that necessity for personal needs is a health and safety risk.
- "Housing situation" means regular or irregular housing situation.

HSN 2012-06B Page 1 of 7 • "Risk to the family" focuses on the health and safety of the children, but is meant to review the situation of the entire family.

Discussion

The DCF HAS assessment process is meant to help families by access to trained social workers who can help them to overcome difficulties in their present housing situation that might result in their remaining in housing rather than resorting to an emergency shelter as a last resort. The HAS assessor has the training to determine whether a situation poses a risk to the applicant family and, in particular, the children in the family. The HAS assessment process is not intended as a barrier to entry to emergency shelter, but as a means of ensuring that families maximize the availability of safe and healthy alternatives to emergency shelter, which is not an optimum environment for children. The statutory, regulatory, and subregulatory guidance provisions involving HAS assessments should be applied with these principles in mind. With these principles in mind, this HSN provides guidance on how to implement the HAS assessment process.

- Guest's conduct attributable to primary tenant. Exposure to repeated conduct of a regular guest in the household is treated as the conduct of the primary tenant or a co-tenant. If the primary tenant or co-tenant allows a guest to visit the unit on a regular basis and the regular guest repeatedly engages in conduct that would constitute behavior warranting EA placement under 760 C.M.R. § 67.06 (1) (f) 6. a.—c. (criminal or otherwise violent conduct, serious mental illness, or substance abuse), the guest's behavior is being effectively condoned by the primary tenant or co-tenant and can therefore be attributed to the primary tenant or co-tenant.
- Whether conduct can or cannot "be addressed" through an intervention is dependent on DHS assessment. 760 C.M.R. § 67.06 (1) (f) 6. a.—c. (criminal or otherwise violent conduct, serious mental illness, or substance abuse) all indicate that the behavior in question warrants placement if it "cannot be addressed" through intervention. Whether the behavior can or cannot be addressed through intervention is a determination to be made by DCF assessors. The regulatory definition does not mean that the applicant family must first try to remedy the situation itself by accessing the named intervention before applying for EA. For example, a member of the primary tenant's family may borrow money from a

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member of the applicant family without asking, because the money was out in the open and the applicant household member was not around, but typically would lend money in similar circumstances. Misunderstandings can occur in these circumstances and the member of the applicant family may accuse the member of the primary tenant's family of theft. That does not mean that the applicant family must report the member of the primary tenant's family to the police in those circumstances before applying. The DCF assessor may determine, however, after reviewing the circumstances with the applicant family and the primary tenant or co-tenant's family that mediation might be an appropriate recommendation to resolve the interfamily tensions and improve interfamily interactions in the future. In order to be considered "criminal conduct," the conduct does not first have to be proven in court. As with review of allegations of criminal activity under 760 C.M.R. § 67.01 (6) (a) 1., all that needs to be present is evidence of facts that would, if proved beyond a reasonable doubt in a court of law, would constitute the necessary elements of a crime, but for administrative purposes such evidence is evaluated by the preponderance of the evidence. In other words, if there is evidence that it is more likely than not that the necessary elements of a crime occurred, that is sufficient for the purposes of a HAS assessment.

If the DCF HAS assessment indicates that the intervention is likely to be successful and that there is no immediate likelihood of harm to the members of the household, the DCF assessors will suggest that the intervention be undertaken and will then re-evaluate the family as indicated in the HAS Administrative Plan. If the HAS assessor determines that the intervention is unlikely to be successful or that there is an immediate likelihood of harm to the members of the household (including emotional or psychological harm induced by exposure to behavior physically directed at their parents), the assessor will determine that there is a substantial health and safety risk in the housing situation.

For example, if a child of the primary tenant and a child in the applicant household regularly are getting into fights, and that is the basis of the application, the DCF HAS assessor will determine whether, with intervention, the children's fighting is likely to stop or be significantly reduced to such a level that there is no

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significant risk to the applicant family's child, for example, so that interactions among the children are age appropriate, not dangerous, and similar to those observed among siblings who may fight occasionally. If the intervention is likely to be successful, the DCF HAS assessor will suggest attempting the intervention first and then will re-assess the family after a period of time to see if the intervention has been successful.

"Lack of" a basic necessity or an inability to access that necessity for personal needs is a health and safety risk. 760 C.M.R. § 67.06 (1) (f) 6. d. (ii) refers to lack of certain basic necessities (hot and cold water, heat in heating months, electricity, lighting, waste disposal) or inability to access them for personal needs as indicia that a location is not "meant for human habitation." 760 C.M.R. § 67.06 (1) (f) 8. Inability to access those necessities means an inability to use those necessities in a manner consistent with meeting typical daily personal needs or, in the case of lighting, inability to access lighting for daytime use and to keep lighting to a minimum during evening night sleeping times. For example, some facilities may be heated during the heating season. However, they typically are lighted at all hours, without the ability people waiting there to control when the lights are dimmed to allow for sleeping during normal sleeping hours. They also do not provide access to hot and cold water sufficient for daily needs, with no ability to wash privately. Also, access to electricity should be sufficient for regular daily personal needs, such as plugging in a personal care device like an electric shaver. A communal family shelter, on the other hand, such as one conforming to 780 C.M.R. §§ 3111.1 et seq., has always been considered "feasible alternative housing" under 760 C.M.R. § 67.06 (1) (b). Lighting in such shelters may not be controllable by the individuals staying there, but lights are turned on and off at times commensurate with normal sleeping hours, and residents have the availability of private sanitation and washing facilities.

• "Housing situation" means regular or irregular housing situation. 760 C.M.R. § 67.06 (1) (f) 7. defines "housing situation" as follows:

housing situation shall mean, for purposes of 760 CMR 67.06(1)(a)4., either: a. a specific housing situation, being the location where the children of the applicant household are regularly sleeping overnight; or

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b. an irregular overnight sleeping situation. A regular overnight sleeping situation is one that is consistent and continually available, not intermittent or occurring for an individual instance. An irregular overnight sleeping situation is an overnight sleeping situation that is not regular.

This means the location where the children in the household typically or regularly spend the night is their housing situation in most circumstances. A location where a child spends a single night or occasional intermittent nights visiting with a friend or family member does not constitute a regular housing situation. If a child is in a housing situation that is irregular, with no regular pattern of overnight sleeping in a particular location (or locations, if such locations are an approved part of a shared child custody agreement) characterized by short stays at multiple and varying locations, that constitutes an irregular sleeping situation. A regular pattern, such as one week with an aunt followed by a week with a cousin, and returning again to the aunt constitutes a regular pattern of overnight sleeping. Similarly, a child who spends Mondays, Wednesdays, Fridays and every other weekend with the child's father is following a regular pattern of overnight sleeping. A stay at a non-EA shelter that is time-limited is considered feasible alternative housing during the time that the family is allowed to stay there, but it is an irregular housing situation because it is not "continually available" due to the time limitation. Such a situation qualifies as a "substantial health and safety risk to the family that is likely to result in significant harm"—even if each individual overnight sleeping situation provides the basic necessities outlined in 760 C.M.R. § 67.06 (1) (f) 6. d. (ii)—if the DCF assessor determines that the situation is persistent, as oppose to occasional, and cannot be remedied immediately by access to feasible alternative housing. In other words, if a child occasionally visits with friends or relatives, but sleeps in the same place regularly, then that regular overnight sleeping location constitutes the family's housing situation. If, on the other hand, the child never consistently sleeps in the same place over a period of time sufficient to indicate that the child has no regular overnight sleeping place, the family will be considered at a substantial health and safety risk. An occasional brief period of time lasting only a few days when a child sleeps overnight in the same location (assuming that this location is used

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rarely and irregularly for that purpose) will not break a persistent lack of a regular overnight sleeping situation. On the other hand, if the family as a whole stays with another family for a period of two or more weeks, that would likely break any persistent lack a regular overnight sleeping situation.

In determining what constitutes persistent irregular housing, the Homeless Coordinator should consider four factors: the length of stay at each particular location, the total number of moves, the number of different locations (as applicant families may return to particular host families repeatedly over a period of time), and the total amount of time that the family has consistently been moving from place to place since the last time that the applicant family stayed with a host family long enough to constitute regular housing. The determination of what constitutes "persistent irregular housing" in a particular case will vary dependent on a weighing of all the factors. The shorter the lengths of stay in particular places, the greater the number of total moves, the greater the number of different locations, and the longer the time since the family last had regular housing, the more likely that the family will be found to have had persistent irregular housing. For daily moves to a different place every night, the total time period might be relatively shorter; for weekly moves that do not result in any regular pattern of rotation forming, the total time period should be considerably longer.

Assessing risk to the family. Assessment of "substantial health and safety risk to the family that is likely to result in significant harm should the family remain" focuses on the health and safety of the children, as the primary focus of the EA program and the expertise of DCF staff, but is meant to review the situation of the entire family. Physical, psychological, mental, or emotional harm to any member of the applicant family caused by the housing situation may be a basis for an assessment of the existence of a substantial health and safety risk.

In situations when a family applies for EA, but the children in the family stayed the prior night with a primary tenant and no other substantial health and safety risk factors are present aside from persistent irregular housing, and the applicant presents written evidence that the primary tenant will no longer permit

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the applicant family's child (or children) to stay with the primary tenant that evening, the Homeless Coordinator shall request a DCF health and safety assessment for the applicant family in specific circumstances: (a) there is a child in the family under 6 months of age, or (b) a member of the household has a documented medical condition or diagnosed disability that would render sleeping in a place unfit for human habitation extremely unhealthy and unsanitary because of that individual's documented medical condition or diagnosed disability, or (c) the applicant family is staying with a primary tenant whose lease or tenancy agreement prohibits guest stays of more than a specific number of dates, when that number of days has been exceeded and the property owner has served a notice to guit on the primary tenant solely because of the length of the applicant's stay with the primary tenant. When a health and safety assessment is requested in these circumstances, the standards used by DCF in determining whether a substantial health and safety risk exists shall be the same as those used in all other cases applying for EA on the basis of a claim of a substantial health and safety risk. If the family is found ineligible under those standards, the DCF assessor may suggest or provide mediation services involving the applicant family, the primary tenant, and, if applicable, the property owner.

Conclusion

When interpreting the HAS regulations and guidance, Homeless Coordinators and HAS assessors should take into account that DCF is determining what types of housing situations truly cause the family to face a substantial risk of significant harm to an applicant family and, in particular, the children.

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